



Steven W. Troxler
Commissioner

**North Carolina Department of Agriculture
and Consumer Services**
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

April 14, 2022

Nicholas Frost
Owner
Top Dog Kennel
P. O. Box 88
Swannanoa, North Carolina 28778

NOTICE of CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J SECTIONS .0102(3); .0202(b); .0203(a); .0204(c); .0204(d); 0207(a) and (b); and .0210(c) and(d) and NOTICE of WARNING.

AWS-CP-2022-8

Facility: Top Dog Kennel
License Number 10386

Dear Mr. Frost:

Pursuant to NCGS § 19A-40, I am issuing this notice that you individually and d/b/a Top Dog Kennel are hereby assessed a civil penalty of \$2,300.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 984-236-1850.

You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Jonathan Lanier
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink that reads "Patricia Norris, DVM, MS". The signature is written in a cursive style with a large initial "P".

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: Michael Martin, DVM, State Veterinarian
Jonathan Lanier, General Counsel, NCDA&CS
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

NICHOLAS FROST
OWNER OF
TOP DOG Kennel

) NOTICE of VIOLATIONS and
) ASSESSMENT of CIVIL PENALTY
) for VIOLATIONS of TITLE 02 N.C.
) ADMINISTRATIVE CODE CHAPTER
) 52J SECTIONS .0102(3); .0202(b);
) .0203(a); .0204(c) and (d); .0207(a) and (b);
) and .0210(c) and (d); and NOTICE of
) WARNING
)

Acting pursuant to N.C. General Statute § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, Top Dog Kennel ("the kennel") was a boarding kennel, licensed pursuant to N.C. General Statute ("NCGS") § 19A-28.
2. On March 30, 2022, AWS conducted an unannounced Facility Compliance Inspection ("FCI") of the kennel. This FCI findings include the following:
 - a. the dog named Aeron was observed to be very emaciated. The following information pertains to this dog:
 - i. Aeron was taken in for boarding on December 28, 2022 and had been in the care and custody of the kennel from that date;
 - ii. the kennel staff relayed that they had been administering Trazadone, a medication prescribed to Aeron, to the dog along with probiotics but review of the kennel records did not show any documentation of the administration of these medications in violation of 02 NCAC 52J .0102(3);
 - iii. the kennel staff revealed that they had not sought veterinary care for the dog despite the easily visible, severe emaciation in violation of 02 NCAC 52J .0210(c);
 - iv. the AWS Inspector directed the kennel staff to seek veterinary care for Aeron within 24 hours due to the severity of emaciation;
 - v. review of the medical records for the March 31, 2022 veterinary examination showed that Aeron was judged to be "Extremely emaciated" weighing 37 lbs. Aeron's previous weight was 57 lbs. for a weight loss of 35% of his previous weight;
 - vi. fecal examination conducted on March 31, 2022 showed that Aeron was suffering from a roundworm infection;
 - vii. Panacur, a deworming medication, was prescribed for Aeron; and
 - viii. a review of the rabies vaccination for Aeron showed that the rabies vaccination expired on February 26, 2021. Boarding of an animal that does not have a current rabies vaccination is a violation of 02 NCAC 52J .0210(d). The kennel was previously cited for this violation during the December 18, 2019 FCI, the June 29, 2020 FCI and

the March 17, 2021 FCI;

- b. ventilation in the dog enclosure area was not adequate to minimize odors and moisture condensation in violation of 02 NCAC .0202(b). The kennel was previously cited for this violation during the May 30, 2019 FCI and the March 17, 2021 FCI;
 - c. bare dirt was visible in extensive areas of the outside exercise area in violation of 02 NCAC 52J .0203(a). The kennel has been cited for this violation on numerous FCIs over the past ten years;
 - d. the concrete in the outside primary enclosures and walkways do not appear to be sealed as evidenced by the algae growth on the concrete in violation of 02 NCAC 52J .0203(a);
 - e. several primary enclosures did not have the required solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time in violation of 02 NCAC 52J .0204(c). The kennel was previously cited for this violation during the June 29, 2020 FCI;
 - f. 4 primary enclosures did not have sufficient square footage of floor space for the size and/or number of animals housed within them in violation of 02 NCAC 52J .0204(d). The kennel was previously cited for these violations during the December 18, 2019 FCI and the June 29, 2020 FCI;
 - g. when asked to describe the cleaning and sanitation procedures for the kennel, the staff described procedures that did not meet the requirements of 02 NCAC 52J .0207 as no detergent is being used for cleaning or sanitation. The primary enclosures showed a significant amount of dried fecal material and other organic material remaining after the first daily cleaning in violation of 02 NCAC 52J .0207(a), (b)(1), and (b)(3). The kennel has been previously cited for these violations on the June 29, 2020 FCI, the July 24, 2020 FCI and the March 17, 2021 FCI.
3. A review of the AWS documentation for the kennel shows that on April 5, 2021, the kennel is issued a Notice of Warning and Notice of Violation on violations of 02 NCAC 52J .0202(b); .0203(a); .0204(a), (b) and (d); .0207(a), (b)(4) and (d); and .0210(d). The April 5, 2021 Notice of Warning and Notice of Violation directed the kennel to comply with the NC Animal Welfare Act and its associated rules. In addition, this Notice advised the kennel of the following:

This Warning Letter serves as written notice indicating in which respects the kennel has violated the N.C. Animal Welfare Act and the rules issued pursuant thereto. The kennel is hereby noticed that a boarding kennel license may not be renewed if there is not an "Approved" rating for at least one FCI in the fiscal year preceding the renewal application submission. To date, there has not been an "Approved" rating for this kennel for the 4 FCIs including and subsequent to the Disapproved FCI on December 18, 2019. Therefore, should the kennel fail to correct these violations and fail to fully comply with the AWA and its associated rules and thereby achieve an Approved rating on a FCI before June 30, 2021, the boarding kennel license renewal application may be denied.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to N.C. General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C. General Statute § 19A-40.

4. The April 5, 2021 Notice of Warning and the FCIs referenced herein were made available to the kennel owner and can be found on the AWS website at: <http://www.ncagr.gov/vet/aws/>.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .0102(3) for failing to maintain records of the administration of medication for the dog named Aeron;

02 NCAC 52J .0202(b) for failing to provide adequate ventilation to minimize odor and moisture condensation within the indoor housing facility on March 30, 2022;

02 NCAC 52J .0203(a) for failing to maintain sealed concrete surfaces in the primary enclosures and walkways with which an animal comes in contact on March 30, 2022;

02 NCAC 52J .0204(c) for failing to provide solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time on March 30, 2022;

02 NCAC 52J .0204(d) for failing to provide sufficient square footage of floor space for the number and size of animals in 4 primary enclosures on March 30, 2022;

02 NCAC 52J .0207(a) for failing to properly clean the primary enclosures a minimum of two times per day on March 30, 2022;

02 NCAC 52J .0207(b) for failing to use detergent to remove all organic matter in the cleaning and sanitation process as noted on March 30, 2022;

02 NCAC 52J .0210(c) for failing to provide veterinary care for Aeron during his prolonged boarding stay at the kennel; and

02 NCAC 52J .0210(d) for failing to have all animal in the kennel in compliance with the NC rabies law, NC General Statutes Chapter 130A, Article 6, Part 6, as Aeron was boarding at the kennel without a current rabies vaccination.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Nicholas Frost, as owner and operator of Top Dog Kennel, is hereby assessed a civil penalty for the following violations:

\$100.00 for violation of 02 NCAC 52J .0102(3) for failing to maintain records of the administration of medication for the dog named Aeron;

\$200.00 for violation of 02 NCAC 52J .0202(b) for failing to provide adequate ventilation to minimize odor and moisture condensation within the indoor housing facility on March 30, 2022;

\$100.00 for violation of 02 NCAC 52J .0203(a) for failing to maintain sealed concrete surfaces in the primary enclosures and walkways with which an animal comes in contact on March 30, 2022;

\$100.00 for violation of 02 NCAC 52J .0204(c) for failing to provide solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time on March 30, 2022;

\$200.00 for violation of 02 NCAC 52J .0204(d) for failing to provide sufficient square footage of floor space for the number and size of animals in a primary enclosure on March 30, 2022;

\$200.00 for violation of 02 NCAC 52J .0207(a) for failing to properly clean the primary enclosures a minimum of two times per day on March 30, 2022;

\$200.00 for violation of 02 NCAC 52J .0207(b) for failing to use detergent to remove all organic matter in the cleaning and sanitation process on March 30, 2022;

\$1,000.00 for violation of 02 NCAC 52J .0210(c) for failing to provide veterinary care for Aeron during his prolonged boarding stay at the kennel; and

\$200.00 for violation of 02 NCAC 52J .0210(d) for failing to have all animal in the kennel in compliance with the NC rabies law, NC General Statutes Chapter 130A, Article 6, Part 6, as Aeron was boarding at the kennel without a current rabies vaccination.

\$2,300.00 TOTAL AMOUNT ASSESSED

(See Appendix for text of referenced General Statutes and Administrative Code)

NOTICE of WARNING and NOTICE of VIOLATION

This Notice of Warning and Notice of Violation serves as written notice indicating in which respects the kennel may have violated the NC Animal Welfare Act and the rules issued pursuant thereto. The facility owner is directed to immediately comply with the AWA and its associated rules.

The kennel is hereby noticed that a boarding kennel license may not be renewed if there is not an "Approved" rating for at least one FCI in the fiscal year preceding the renewal application submission. To date, there has not been an "Approved" rating for this kennel for the 2021-2022 fiscal year. Therefore, should the kennel fail to correct these violations and fail to fully comply with the AWA and its associated rules, and thereby achieve an Approved rating on a FCI before June 30, 2022, the kennel's boarding kennel license renewal application may be denied.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to N.C. General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C. General Statute § 19A-40.

April 14, 2022
Date

Patricia Norris, DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

*History Note: Authority G.S. 19A-24;
 Eff. April 1, 1984;
 Amended Eff. January 1, 2005.*

02 NCAC 52J .0202 INDOOR FACILITIES

(b) Indoor housing facilities for dogs and cats shall be adequately ventilated to provide for the health and comfort of the animals at all times. The facilities shall be provided with fresh air either by means of windows, doors, vents or air conditioning and shall be ventilated so as to minimize drafts. Air flow shall be adequate to minimize odors and moisture condensation.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(c) Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time. All resting surfaces must be of a non-porous or easily sanitized material, such as a towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

(d) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in square inches ÷ 144 = required floor space in square feet. The calculation shall be expressed in square feet. Not more than four adult dogs shall be housed in the same primary enclosure without supervision.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0207 SANITATION

(a) Waste shall be removed from primary enclosures and exercise areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats must be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris. When a hosing or flushing method is used for cleaning an enclosure, dogs or cats contained therein shall be removed during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

(b) Sanitation shall be as follows:

- (1) Prior to the introduction of dogs or cats into empty primary enclosures previously occupied, enclosures and accessories shall be sanitized in the manner provided in Subparagraph (b)(3) of this Rule.
- (2) In addition to primary enclosures being properly cleaned a minimum of two times per day, enclosures and accessories shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (b)(3) of this Rule if the same animal is housed in the same enclosure more than seven days.
- (3) Cages, rooms and hard-surfaced pens or runs shall be sanitized by:
 - (A) washing them with hot water (180 degrees F.) and soap or detergent as in a mechanical cage washer; or
 - (B) washing all soiled surfaces with a detergent solution to remove all organic matter followed by application of a safe and effective disinfectant; or
 - (C) cleaning all soiled surfaces with live steam.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.